

BEFORE THE TENNESSEE ETHICS COMMISSION

In re:) No. 2008-28
)
UNISYS,)
)
Respondent.)

ORDER ASSESSING CIVIL PENALTIES

This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on June 24, 2008, at its regularly scheduled meeting upon Commission staff's presentation of documentation substantiating that Respondent failed timely to file a Semi-Annual Lobbying Expenditure Report ("Report") which each employer of a lobbyist is required to file pursuant to Tenn. Code Ann. § 3-6-303(a) or timely amend its registration statement pursuant to Tenn. Code Ann § 3-6-302 (c).

FINDINGS OF FACT

Based on the entire record in this matter, the Commission finds as follows:

1. Registration. Unisys was registered as an employer of a lobbyist for 2007. It did receive a Notice of Failure to Pay Registration Fee on November 13, 2006 and paid shortly after receiving the Notice.

2. Semi-Annual Lobbying Expenditure Report.

A. In October 2007, Commission staff notified Unisys by electronic mail that it was required to file a Report for the period ending September 30, 2007, and that such Report was due to be filed by November 15, 2007.

B. As of November 15, 2007, Unisys had not filed its Report for the period ending September 30, 2007.

C. On December 5, 2007, Commission staff mailed Unisys a Notice of Failure to File Semi-Annual Lobbying Expenditure Report ("Notice") by first class mail.

D. Unisys did not respond to said Notice and did not file its Report.

E. Unisys timely filed its Report for the period ending March 31, 2007

F. Unisys is in possession of the Commission's manual for lobbyists and employers of lobbyists as required by Tenn. Code Ann. § 3-6-114(c) (1), which contains the requirement of filing Reports and amending registration statements.

G. Unisys had sufficient notice of the requirement of filing the Report for the period ending September 30, 2007, in advance of its due date of November 15, 2007 and the requirement that registrations statements must be amended upon changed circumstances.

3. Notice of violation.

A. On March 12, 2008, Commission staff sent Unisys, by certified mail, return receipt requested, a Notice that the Commission intended to consider assessment of civil penalties against Unisys at its April 22, 2008 meeting, because of its failure to file its Report by November 15, 2007 (“Show Cause Notice.”)

B. The Show Cause Notice set forth the allegations, the maximum amount of civil penalties that could be assessed, the date, place, and time of the meeting, and Unisys’ opportunity to participate in an informal proceeding at the meeting either by appearing personally or by submitting a sworn statement and documents.

C. The Commission received a return receipt substantiating that Unisys received the Show Cause Notice on March 17, 2008.

4. Filing of Report. The Commission received Unisys’ Semi-Annual Lobbying Expenditure Report on March 31, 2008.

5. Showing of Cause. Unisys provided an affidavit on April 7, 2008 that its relationship with its lobbyist ended on February 28, 2007 and that it did not have any lobbyist expenditures for the November 15, 2007 reporting period. Unisys also provided that Notices had been sent to an incorrect address and to an incorrect contact person. April 7, 2008 was the first time that the Commission was notified of the above information.

CONCLUSIONS OF LAW

1. Unisys had a duty under Tenn. Code Ann. § 3-6-302(c) to timely update, correct or otherwise modify its Registration.

2. Under Tenn. Code Ann. § 3-6-306(a)(1)(A)(i), the Commission may administratively assess a civil penalty of not more than twenty-five dollars (\$25.00) per day up to a maximum of seven hundred fifty dollars (\$750.00) if an employer of a lobbyist fails, without good cause, to timely update, correct or otherwise modify its Registration Statement .

3. Unisys did not show good cause why it failed to timely file an amended Registration Statement.

4. Therefore, it is appropriate for the Commission to assess a civil penalty pursuant to Tenn. Code Ann. § 3-6-306(a)(1)(A)(i). The Commission would be within its authority to assess the maximum penalty of seven hundred fifty (\$750.00) dollars.

5. Unisys had received a prior late payment Notice which is an aggravating factor in assessing a penalty. A mitigating factor is that it timely responded to the Show Cause Notice. Therefore, the Commission finds it appropriate to assess a civil penalty of three hundred dollars (\$300.00) for its failure to amend its registration statement.

6. This assessment cannot become final until after respondent has been afforded notice and an opportunity for a hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to its right to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101—4-5-325.

ORDER

It is therefore ORDERED as follows:

1. A civil penalty in the amount of three hundred dollars (\$300.00) is assessed against Unisys for failure to timely update, correct or otherwise modify its Registration Statement.

2. The Executive Director shall enter this Order.

3. The Executive Director shall cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail, return receipt requested, or overnight delivery.

4. Respondent shall have the right to seek reconsideration of this Order by filing with the Commission, within fourteen (14) days after the date of entry of this Order, a written Request for Reconsideration in the form set forth in the Commission's draft Rules on Administrative Sanctions.

5. Alternatively, Respondent shall have the right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days after the date of entry of this Order, a Petition for a contested case hearing in the form set forth in the Commission's draft Rules on Administrative Sanctions.

6. Along with this Order, the Executive Director shall provide Respondent a copy of the Commission's draft Rules on Administrative Sanctions.

7. If Respondent does not timely file a Request for Reconsideration or a Petition for a contested case hearing, this Order shall become final and shall form the basis for legal action to collect the civil penalty.

SO ORDERED, this 30th day of June, 2008

TENNESSEE ETHICS COMMISSION

By: _____
Bruce A. Androphy, Executive Director